

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

Plaintiffs, ) NO. CV-08-243-FVS  
erim guardians )  
ROTHY SPIOTTA )  
)  
)  
)  
FINDINGS AND RECOMMENDATIONS  
Plaintiffs, )  
)  
)  
)  
)  
AMS INC.; )  
P, INC.; and )  
)  
)  
Defendant,

**THIS MATTER** comes before the Court without oral argument based upon a dispute over the use of certain contracts (hereafter "Agreements") in further court proceedings. K.S., Dorothy Spiotta, and Paul Spiotta are represented by Timothy K. Ford and Katherine C. Chamberlain. Kenneth Isserlis is the guardian ad litem for K.S. Defendants Ambassador Programs, Inc., and Ambassadors Group, Inc. (hereafter "Ambassador"), are represented by Brian T. Rekofke, Jerry S. Phillips, and Geana M. Van Dessel. Defendant People to People International Inc. (hereafter "PTPI") is represented by James B. King.

## BACKGROUND

There are three Defendants. They are Ambassador Programs, Inc., Ambassadors Group, Inc., and People to People International Inc. They have executed the Agreements governing their respective relationships with each other. The Defendants have disclosed copies of the Agreements to the Plaintiffs subject to a private confidentiality agreement prohibiting the Plaintiffs from

1 revealing the contents of the contracts to the public. The  
2 Plaintiffs have filed a motion to compel (Ct. Rec. 100) requesting  
3 the Court to enter an order both releasing them from their  
4 agreement with the Defendants and authorizing them to use the  
5 Agreements in this action without restriction. The Defendants have  
6 filed a motion (Ct. Rec. 122) requesting the Court to issue a  
7 protective order maintaining the confidentiality of the contracts.

8 The Plaintiffs say they intend to file copies of the  
9 contracts in support of dispositive motions and will use the  
10 contracts at trial (Ct. Rec. 105). The parties have been ordered  
11 to file copies of the contract documents and related deposition  
12 testimony under seal so that the documents may be inspected *in*  
13 *camera* by the Court to determine whether they should be revealed  
14 to the public. Ct. Rec. 142

15 The issues have been referred to the undersigned Magistrate  
16 Judge for Findings and Recommendation (Ct. Rec. 143).

17 **FACTUAL ALLEGATIONS**

18 This is a case involving allegations of negligence, breach of  
19 contract, fraud, and consumer protection violations. Plaintiffs  
20 allege the Defendants made false representations about the People  
21 to People Student Ambassador Program, including but not limited to  
22 allegedly misrepresenting to the Plaintiffs that PTPI had selected  
23 K.S. to be a student ambassador in Australia during summer 2006.  
24 Defendants generally deny the allegations, but admit that  
25 Ambassador Programs, Inc. plans, organizes, markets and implements  
26 overseas trips for minor children, including the one attended by  
27 K.S.

28

1       Following commencement of suit, Plaintiffs served discovery  
2 requests on the Defendants, asking for production of Agreements  
3 between the defendants, and any other documents, that describe the  
4 relationships between Ambassador and PTPI. See RFP #14, Ct. Rec.  
5 102, Ex. 1. Defendants responded that the documents responsive to  
6 the request would "be produced after an appropriate  
7 confidentiality agreement is executed by the parties." Thereafter,  
8 the parties negotiated for either complete surrender of the  
9 agreements (Plaintiffs) or a protective order (Defendants). Unable  
10 to reach final agreement and with scheduled depositions of the  
11 Defendants' Chief Executive Officers approaching, the parties  
12 entered into a temporary agreement for the limited use of the  
13 agreements pending a final negotiated resolution by the parties or  
14 order from the Court. Defendants produced the Agreements pursuant  
15 to the temporary written agreement. The temporary written  
16 agreement provides that the Agreements will be produced but may  
17 only be used for the taking of specific depositions, that those  
18 depositions be sealed and that the Agreements and the deposition  
19 transcripts may only be viewed by counsel for the parties. Ct.  
20 Rec. 102, Ex. 6,7,8.

21       Following the depositions of the Defendants' CEOs, the  
22 Defendants filed their Joint Motion for Protective Order. Ct. Rec.  
23 122. In support thereof, Defendants allege that the Agreements  
24 contain "privileged, confidential and proprietary matters." Ct.  
25 Rec. 123, 124.

26       Defendants argue that the contracts between PTPI and  
27 Ambassador spell out Ambassador's right to use and restrictions of  
28 said use, the trademark-registered and protected PTPI service mark

1 and logo in the educational student travel and exchange programs  
2 that Ambassador conducts. The Defendants argue that the contracts  
3 spell out details of what PTPI and Ambassador require from their  
4 relationship with each other and that said details are  
5 confidential and proprietary in nature. They argue that  
6 Ambassador's travel "model" is unique and different than that used  
7 by Ambassador's competitors and reveals information that would  
8 give Ambassador's competitors a significant competitive advantage  
9 if disclosed. The Defendants argue that the General Contract  
10 agreement specifically lists royalty fees paid by Ambassador to  
11 PTPI. They urge that this information, if revealed, would also  
12 strengthen the bargaining position of competitor companies that  
13 negotiate with PTPI and/or other companies Ambassador enters into  
14 business with. They argue that by knowing the exact term of the  
15 contracts, Ambassador's competitors would know the precise time to  
16 contact PTPI to compete with Ambassador in any renewal of the  
17 business relationship. Defendants assert that they have been  
18 denied access to licensing agreements between their competitors  
19 because of the competitive advantage they would have obtained. Ct.  
20 Rec. 146. Finally, the Defendants argue that the contracts between  
21 them have never been publicly disclosed and when produced in other  
22 litigation matters have always been subject to a stipulation and  
23 protective order similar to the one proposed by the Defendants  
24 initially. In sum, Defendants request that the Court enter a  
25 protective order prohibiting the Plaintiffs from disclosing the  
26 contents of the contracts to the public and requiring the  
27 Plaintiffs to file the contracts under seal if the contracts are  
28 filed as part of the Court record. Ct. Rec. 128, p.2.

## THE AGREEMENTS

2 The Agreements have been filed under seal with the Court. Ct.  
3 Rec. 144. The relevant case law suggests that the disputed  
4 documents should be reviewed *in camera* by the Court to determine  
5 if those documents contain, in the Court's view, privileged,  
6 confidential and/or proprietary information or are otherwise  
7 subject to a protective order. Kamakana v. Honolulu, 447 F.3d  
8 1172, 1177 (9<sup>th</sup> Cir. 2006).

9        In this case, the Agreements consist of the following  
10 documents:

11 1. General Contract Between People To People International  
12 and International Ambassador Programs, Inc. People To People  
13 Student Ambassador Program- Bates Stamped AMB001478-AMB001485  
14 (hereafter "General Contract")

15           2. Consent To Assignment Agreement- Bates Stamped AMB001486-  
16           AMB001491

17           3. Amendment To General Contracts- Bates Stamped AMB001492-  
18 AMB001493

19 4. Letter Agreement- Bates Stamped AMB001494

20 5. Letter Agreement- Bates Stamped AMB001495

21 The Agreements are discussed in some detail in the  
22 depositions identified hereafter:

23           6. Deposition Transcript (partial) of Jeffrey Thomas- March  
24 12, 2009

25           7. Deposition Transcript (partial) of Mary Jean Eisenhower-  
26 June 17, 2009

The Court has reviewed each of the documents identified *in camera*. Plaintiffs have determined that the General Contract is the primary agreement between the defendants that Plaintiffs intend to use in this litigation in dispositive motions and at trial. Ct. Rec. 145.

## LEGAL STANDARDS

Upon a showing of "good cause" the Court has broad latitude to enter an order requiring that "a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a specified way." Fed.R.Civ.P.26(c) (1) (G); *Phillips v. Gen. Motors Corp.*, 307 F.3d 1206, 1211 (9th Cir. 2002).

13 "A party asserting good cause bears the burden, for each  
14 particular document it seeks to protect, of showing that specific  
15 prejudice or harm will result if no protective order is granted."  
16 Foltz v. State Farm Mut. Auto. Ins. Co., 331 F.3rd 1122, 1130 (9<sup>th</sup>  
17 Cir. 2003)

18 A district court must have “compelling reasons” in order to  
19 shield a judicial record from public access when the record is  
20 attached to a **dispositive** motion. *Pintos v. Pacific Creditors*, 565  
21 F.3d 1106, 1115-16 (9th Cir.2009); *Kamakana v. City & County of*  
22 *Honolulu*, 447 F.3d 1172, 1178-80 (9th Cir.2006).

23 Under the compelling reasons standard, the court weighs  
24 relevant factors; the Court's analysis is reviewed for abuse of  
25 discretion. *Pintos v. Pac. Creditors Assoc.*, *supra*. "Relevant  
26 factors include the public interest in understanding the judicial  
27 process and whether disclosure could result in improper use of the

1 material for scandalous or libelous purposes or infringement upon  
2 trade secrets." *Id.*, n. 6; *Kamakana*, 447 F.3d at 1179.

3 A "trade secret" is defined as:

4 Information, including a formula, pattern, compilation, program,  
5 device, method, technique, or process that: (a)Derives independent  
6 economic value, actual or potential, from not being generally  
7 known to, and not being readily ascertainable by proper means by,  
8 other persons who can obtain economic value from its disclosure or  
9 use; **and** (b) Is the subject of efforts that are reasonable under  
10 the circumstances to maintain its secrecy. RCW  
11 19.108.010(4) (emphasis added).

12 **DISCUSSION, FINDINGS AND RECOMMENDATIONS**

13 The Agreements contain certain material that could be  
14 considered proprietary trade secrets if broadcast to the public at  
15 large or, more specifically, to the Defendants' competitors. Those  
16 include details about (1) royalty fees and other compensation paid  
17 to PTPI by Ambassador; (2) the term of Ambassador's contract with  
18 PTPI; and (3) Ambassador's right to use the "People to People"  
19 trademark and logo. See Bodholt Dec. Re: Defendants' Motion for  
20 Protective Order (Ct. Rec. 123, p. 4, 8-9.) While Plaintiffs do  
21 not concede that this information is proprietary, they argue that  
22 the information sought to be protected has already been revealed  
23 in public filings and/or on the public web sites of either  
24 Ambassador or PTPI. See Declaration of Katherine C. Chamberlain,  
25 Ct. Rec. 138 and Ex. A,B,C and D thereto.

26 **Royalty Fees:**

27 The 2007 Annual Report of PTPI discloses at Note 11 that the  
28 total revenue generated from the relationship with the Ambassadors

1 Program was \$3,245,385 for the year ended December 31, 2006. Ct.  
2 Rec. 138, Ex. D. This information discloses in the aggregate the  
3 financial relationship between PTPI and Ambassador for the year on  
4 which the action is premised, but does not disclose the financial  
5 arrangement per each student delegate as described in the General  
6 Contract. Thus, the reason stated by the Defendant for non-  
7 disclosure maintains its viability. It would detrimental to  
8 Ambassador if the individual student fee charged was known to the  
9 public and hence any competitor of Ambassador.

10 **Term of Contract:**

11 The 2008 Ambassadors Group Annual Report discloses as follows:

12 "We have the exclusive right from People to People  
13 International ("People to People") to develop and conduct student  
14 programs for kindergarten through high school students using the  
15 People to People name. We also have the non-exclusive right to  
16 develop, market and operate programs for professionals, college  
17 students and athletes using the People to People name. However, at  
18 the present time, we are the only entity that has been given this  
19 right by People to People. These rights, granted pursuant to  
20 agreements with People to People, expire in 2010 and, at our  
21 election, may be extended through 2020. People to People is a  
22 private, non-profit organization dedicated to the promotion of  
23 world peace through cultural exchange." Ct. Rec. 138, Ex. B.

24 Emphasis added.

25 This information is significant in the Court's view. First,  
26 it clearly discloses to the public that the term of the  
27 Defendants' agreement expires in 2010. Secondly, it capsulizes or  
28

1 summarizes the business model between the Defendants and discloses  
2 that model to the public.

3 Since this information was disclosed in Ambassador Group's  
4 Annual Report, it is difficult to understand the Defendants'  
5 position that such information, contained in the General Contract  
6 and as amended in the Amendment to General Contract, is  
7 proprietary and constitutes a "trade secret" when the information  
8 is not secret at all.

9 **Use of PTPI Trademark and Logo:**

10 Again, at p. 5 of the 2008 Ambassadors Annual Report, the  
11 Defendants clearly disclose to the public that Ambassador has  
12 registered or applied for a variety of service and trademarks. The  
13 Annual Report states, in pertinent part, under the heading of  
14 Service and Trademarks as follows: "In addition, we have the  
15 right, subject to certain exceptions, to use People to People's  
16 name, service mark and logo for use in our marketing. We believe  
17 that the strength of our service and trademarks is valuable to our  
18 business and intend to continue to protect and promote our marks  
19 as appropriate. We believe that our business is not overly  
20 dependent upon any one trademark or service mark." Ct. Rec. 138.  
21 Emphasis added.

22 Thus, the Defendants clearly have made public the information  
23 that they have a relationship for Ambassador to use the trademark  
24 and logo of PTPI and that Ambassador is not overly dependent on  
25 any one of the trademarks. The consideration paid to use same, if  
26 any, is not disclosed in either the Annual Report or the  
27 Agreements themselves.

28

1       As to these particular items, the Defendants have failed to  
2 keep what they contend is private information *private*. The holder  
3 of a trade secret "must make reasonable efforts to maintain the  
4 secrecy of the material...Allowing private information to become  
5 public, even through carelessness, precludes protection as a trade  
6 secret." *Woo v. Fireman's Fund Ins. Co.*, 137 Wash. App. 480, 490,  
7 154 P.3d 236,241 (2007); RCW 19.108.010(4) (b) .

8       An examination of the General Contract and the Consent to  
9 Assignment themselves reveals very little, if any, information  
10 about the model for education travel that Defendants assert is  
11 unusual and unique to the industry. In fact, there are no specific  
12 details about what is done during student or adult travel or how  
13 any excursion is organized in particular. It seems to the Court  
14 that such "nuts and bolts" information may be what is truly  
15 proprietary and subject to protective order. But that kind of  
16 information does not appear in the Agreements. The Defendants  
17 cannot, simply by proclaiming that the information contained in  
18 the Agreements or the deposition transcripts is "unique" or  
19 "unusual", make it so. As explained by the Ninth Circuit in  
20 *Kamakana v. Honolulu*: "Simply mentioning a general category of  
21 privilege, without further elaboration or any specific linkage  
22 with the documents, does not satisfy the burden." 337 F.3d 1172,  
23 1184 (9<sup>th</sup> Cir. 2006) .

24       Finally, none of the Agreements or the deposition transcripts  
25 contain information of a nature that might commonly be protected,  
26 i.e. names or addresses of participants, dates of travel programs,  
27 itineraries, information about industry contacts etc. This  
28 information, if disclosed to competitors, might truly harm the

1 Defendants. But the Defendants do not claim that the Agreements or  
2 deposition transcripts contain such confidential and proprietary  
3 information.

4 Accordingly, the Court **does not find** that the Defendants have  
5 met either the "compelling reasons" standard for overcoming the  
6 strong presumption of public access or shown "good cause" that  
7 specific prejudice or harm will result if no protective order is  
8 granted except as to the individual student delegate fee  
9 provisions contained in the General Contract and as discussed in  
10 the depositions.

11 Based on the above stated discussion and findings, the Court  
12 **RECOMMENDS AS FOLLOWS:**

13 1. That the District Judge grant Plaintiffs' Motion to Compel  
14 Agreements (Ct. Rec. 100) except for Paragraph 6 B. of the General  
15 Contract which should be redacted in its entirety before any  
16 public filing with the court. Further that any reference to  
17 specific student or adult fee amounts or volumes in the  
18 depositions of Mary Eisenhower (p. 108-109) or Jeffrey Thomas (p.  
19 100-105) should be redacted before public filing with the court.

20 2. That the District Judge order that Plaintiffs may use and  
21 file the redacted Agreements and related deposition testimony  
22 without further restriction in this litigation.

23 Any party may object to a magistrate judge's proposed  
24 findings, recommendations or report within fourteen (14) days  
25 following service with a copy thereof. Such party shall file  
26 written objections with the Clerk of the Court and serve  
27 objections on all parties, specifically identifying the portions  
28 to which objection is being made, and the basis therefor. Any

1 response to the objection shall be filed within fourteen (14) days  
2 after receipt of the objection. Attention is directed to Fed. R.  
3 Civ. P. 6(d), which adds additional time after certain kinds of  
4 service.

5 DATED this 2<sup>nd</sup> day of December, 2009.

6  
7 s/James P. Hutton  
8 JAMES P. HUTTON  
9 UNITED STATES MAGISTRATE JUDGE  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28